



Cri. Appeal 886/96

(2)

/- APPEAL OF PRISONER -/

Division Bench (Criminal)

No. 358

Name मुचाकी बोदो (ब) बोदा

Father's Name पेदा

Residence सा. मुतनपाल - मुसकोन्दापारा

Age 30

Sentenced to अजीवन कारावास

14.2.96

under Section 302 I.P.C. by खत्र न्यायां

S.P.No. 12/95

जमदलपुर

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appellate Court will not proceed with the case for seven days unless the legal practitioner appears. If the legal practitioner does not appear within the seven days he may be heard at all if the prisoner states that he does not wish to be represented by legal practitioner the Court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1. Date of application for copy of Judgement : No.
2. Date of which copy received :- 14.2.96
3. Date on which Appellat sent :- 26.2.96
4. Whether the prisoner wished to be represented or not Yes/No

No. 358 Name मुचाकी बोदो (ब) बोदा पिता पेदा

Continued in जिला Jail पथम - प्रेमी जमदलपुर

No. 239 1 October/96 Dated 26/2/96

Forwarded to the CHIEF JUDICIAL MAGISTRATE Jamsalpur together with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

Superintendent, Central/Distt./
Jail.

Date of receipt in C.J.M's Office.

Date of receipt of record of accompany.

Memo of Appeal of the Appellate Court.

No. 4 Dated 1.3.96

Forwarded to the H'ble Distt. and Sessions Judge Jamsalpur

C.J. Magistrate

1.3.96

मुख्य न्यायाधीश जमदलपुर

जमदलपुर

Date of receipt of Appellate Court.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr. App 886/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>DIVISION BENCH:</u> <u>HON'BLE MR. L.C. BHADOO &</u> <u>HON'BLE MR. DHIRENDRA MISHRA, JJ</u> <u>21.02.2006</u> Shri Ashok Verma, Advocate for the appellant. Shri U.N.S. Deo, Additional Public Prosecutor with Shri Ravindra Agarwal, Panel Lawyer for the State/respondent. Oral judgment dictated on <i>Dais</i>. <u>Per L.C. Bhadoo, J.</u> Accused/appellant Muchaki Bodo alias Boda has preferred this appeal questioning the legality & correctness of the judgment of conviction & order of sentence dated 14.2.1996 passed by learned Sessions Judge, Jagdalpur in Sessions Trial No.12/95 whereby learned Sessions Judge after holding the accused/appellant guilty for commission of murder of Koyami Madda convicted him under Section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life. The prosecution case, in brief, is that on 15.11.94 accused Muchaki Bodo and deceased Koyami Madda were consuming country made liquor (लादा) in the market of Muttanlal, during that time some altercation took place between the two and accused attacked the deceased with the axe on the back of his neck, as a result of which Koyami Madda received injury. Koyami Madda was taken to the Primary Health Centre, Bade Kilepal where	

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	Dr. Naresh Chandra Lange (PW-3) examined the injured and found that there was an injury on the spinal cord in the size of 3"x1"x3". He also prepared the injury report Ex.P-4 and gave his opinion regarding cause of injury. Thereafter, Poyami Modda was referred to Maharani Hospital, Jagdalpur where Dr. Govind Singh (PW-1) X-rayed the spinal cord and found that D-3 & D-4 vertebra were fractured. During treatment on 16.11.1994 Poyami Modda succumbed to the injury. Receiving report given by PW-4 Mitki Bai, Station House Officer, Police Station Kodnal registered the F.I.R. (Ex.P-6) under Section 307 of the Indian Penal Code. While in police custody, accused gave memorandum (Ex.P-7) and in pursuance of that the axe i.e. weapon of offence was recovered under Ex.P-8. The shirt of the accused was taken into possession under Ex.P-9. The Investigating Officer took into possession the blood stained soil and plain soil from the place of occurrence under Ex.P-10. As, during treatment Poyami Modda died, therefore, the offence was converted into Section 302 of the Indian Penal Code. Dr. Pradeep Pandey (PW-2) conducted the postmortem examination on the body of deceased and prepared the postmortem report Ex.P-3. After completion of investigation, charge sheet was filed in the Court of learned Judicial Magistrate First Class, Jagdalpur who in turn committed the case to learned Sessions Judge, Rajnandgaon for trial.	

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	3	The prosecution in order to prove the charge against the accused/appellant examined eight witnesses. Statement of accused/appellant was recorded by learned Sessions Judge under Section 313 of the Cr.P.C. in which he denied the prosecution evidence. Learned Sessions Judge after hearing the Additional Public Prosecutor & counsel for the accused convicted and sentenced the accused in the manner as mentioned in Para-1 of this judgment. We have heard Shri Ashok Verma, Advocate for accused/appellant & Shri Ravindra Agarwal with Shri U.N.S. Deo, Addl. Public Prosecutor, for the State/respondent. Homicidal death of deceased Poyami Madda is not in dispute. As far as involvement of the accused/appellant in the crime in question is concerned, PW-4 Metki Bai, who witnessed the crime in question and also lodged the report (Ex.P-6) in the Police Station, has stated in her evidence that on the fateful day the accused/appellant and the deceased were consuming country made liquor (लादा) in the market of Muttanpal village and during that period the accused assaulted the deceased with the axe, as a result of which Poyami Madda fell down. Matter was reported to the police under Ex.P-6. In the cross-examination, this witness has stated that when they were consuming liquor both started quarrelling in the intoxication stage and thereafter accused assaulted the deceased with the axe. The axe in question was recovered at the instance of accused. As per

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evidence Dr. Govind Singh (PW-1), D-3 & D-4 vertebra were found fractured and as per evidence of & Dr. N.C. Lange (PW-3), he examined the injured and found one incised wound in the size of 3"x1"x3" and same was grievous in nature. Therefore, the involvement of accused/appellant is established in view of the ocular evidence of Metki Bai (PW-4) and medical evidence.

Learned counsel for the accused/appellant argued that accused/appellant and deceased both were consuming country made liquor (लादी), they were in intoxication stage and as per evidence of PW-4 Metki Bai, in that process they started quarrelling and the accused without any pre-meditation, in a sudden quarrel picked up the axe and assaulted on the back of the neck of deceased. Therefore, the offence does not travel beyond Section 304 Part-II of the Indian Penal Code. He further argued that even the doctor has not stated that the injury was sufficient to cause death in ordinary course.

On the other hand, Shri Agarwal, learned Panel Lawyer for the State supported the judgment of trial Court.

Having heard learned counsel for the parties, we have perused the medical evidence as well as evidence of PW-4 Metki Bai, eyewitness of the incident. PW-4 Metki Bai has categorically stated in her cross-examination that both the accused & deceased were consuming liquor, during that period some altercation took place, they started quarreling, the accused

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picked up the axe and assaulted on the back of the deceased. As per medical evidence, D-3 & D-4 vertebra were found fractured and injury received by the deceased was grievous in nature. The background, in which the accused assaulted, that the accused and deceased both were consuming liquor and in a sudden quarrel, the accused picked up the axe and assaulted the deceased. From the facts, it cannot be inferred that the accused attacked the deceased with the intention to cause his death, but it can certainly be inferred that while attacking with the axe the accused had definite knowledge that by causing injury by the axe he may likely to cause death. Therefore, the offence against the accused/appellant under Section 304 Part-II is made out and as such, the conviction and sentence imposed under Section 302 of the Indian Penal Code cannot be sustained.

In the result, the appeal is partly succeeds. Conviction awarded to appellant Muchaki Boddoo alias Boda under Section 302 of the Cr.P.C. is hereby set aside, instead thereof appellant Muchaki Boddoo alias Boda is convicted for commission of offence punishable under Section 304¹⁶ Part-II of the Indian Penal Code and sentenced to undergo R.I. for 10 years.

Appellant Muchaki Boddoo alias Boda is stated to be in custody since 1994, thereby he is in detention for more than 11 years, therefore, he be set at liberty forthwith, if not required in connection with any other case.

Certified copy as per rules.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

27/05/2000
Rashmi